

COUNCIL MINUTES  
TIGARD CITY COUNCIL MEETING  
September 14, 2004

The meeting was called to order at 6:30 p.m. by Mayor Dirksen.

Council Present: Mayor Dirksen, Councilors Moore, Sherwood, Wilson. Councilor Woodruff was excused.

- EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 6:31 p.m. to discuss pending litigation under ORS 192.660(2) (h).

Executive Session concluded at 7:04 p.m.

- STUDY SESSION

- > FIELD OF DREAM AUCTION 2004

City Manager Bill Monahan noted information about this event is included in the agenda packet. Councilors are invited to participate by donating an item or items for the auction.

- > CORRECTIONS TO JULY 27 AND AUGUST 10 MEETING MINUTES

Deputy City Recorder Jane McGarvin noted the changes were to designate exhibit numbers that had been omitted in the minutes. She noted Sally Harding has indicated her statement on page 20 of July 27 minutes was incorrect. Beginning on line 6 of her statement, it should be changed as follows:

"Ms. Harding noted her taxes have gone up substantially since annexation occurred. The tax assessed value is way out of line with the appraised value by \$20,000 plus, both in 2000 and 2002."

The Council concurred to make the changes during the Business Meeting.

- > RIBBON CUTTING AT BONITA VILLAS

Mr. Monahan noted receipt of an invitation from Washington County Department of Housing Services to the ribbon cutting at Bonita Villas on Thursday, October 21 at 10 a.m.

- Calendar Review
  - a) September 14, City Council Business Meeting
  - b) September 15, Candidate Orientation at Town Hall, 6 p.m.
  - c) September 18, Tigard Blast/Citizen Fair, Parade staging at 9:30 a.m.
  - d) September 21, City Council Workshop Meeting
  - e) September 28, City Council Business Meeting
  - f) September 29, Lunch at TVF & R Station 51, Noon

➤ **PRELIMINARY DISCUSSION ABOUT CONTIGUOUS ANNEXATION PROCESS**

Community Development Director Jim Hendryx explained this item will be discussed at the Council Workshop Meeting on September 21 and the presentation tonight would be a brief overview of the proposal. Based on current policies and practices, property is being developed outside the City. As a result, the City does not collect park SDC's and is losing revenue. There is a comprehensive plan component which proposes logical boundaries be maintained in the City.

Mr. Hendryx explained as development occurs within the urban services area, Council has directed that the owners be required to either sign a consent to annex if they are immediately adjacent to the City Limits, or if they are located in the urban service area not adjacent to the City, to sign a Waiver to Consent to Annex. Those waivers are good for an indefinite period of time. Some areas with signed waivers are located quite a distance from the existing City Limits, including Bella Vista and Tuscan Subdivisions; other properties are immediately adjacent to the City Limits. Other areas could be immediately adjacent if other properties annex. Developments immediately adjacent to the City are required to be annexed upon development. The Alberta Rider development included a condition for approval that the property be annexed prior to development. The Barbara Summit subdivision is going through the land use process and will include the condition that annexation occurs as part of their development approval. Summit Ridge is not adjacent to the City but is separated by other properties. There are other properties in various stages of development. Some projects are not deemed complete yet, meaning the City has not accepted it yet.

Mr. Monahan asked if "deemed complete" means someone coming in to ask questions. Summit Ridge is development as dirt is being moved around; Alberta Rider on the other hand is close to be freed up to begin design.

Mr. Hendryx explained that with regard to the Alberta Rider School, that would mean prior to obtaining building permits or final occupancy. With subdivisions, "deemed complete" means prior to final plan approval. Council's policy has been not to proceed with island annexations. There are islands on Fern Street. He also noted some islands will be created when other properties are annexed. Council also has to be cognizant of the Bull Mountain Annexation which is going to a vote in November. In total, there are approximately 250 subdivision lots involved, which were pointed out. This will continue to be dependent on the Washington County Commissioners, and whether the Commissioners imposes an interim parks system development charge regardless of whether property is located inside or outside the city, which could have an impact on Tigard. He explained he is not asking for direction at this time, but just wanted to give Council a little explanation before they look at next week's packet. He showed another map which showed locations of property where Consent to Annex Waivers have been received as well as where Petitions to Annex are pending.

Mr. Hendryx explained until recently, Waivers of Consent to Annex were only good for one year. The law was recently changed that if a city provides services to a development, the waivers essentially are contracts for services with the City and there is no timeline that the property has to be annexed by. What occurs now is when an owner signs a Waiver of Remonstrance, they agree to annex without objection and also waive the one-year limitation. The Waivers of Remonstrance are recorded with the County.

Mr. Hendryx noted he will go over this in more detail at next week's Workshop meeting. Based on the direction Council gives, staff will proceed. He noted that effective dates of annexations cannot be effective between 60 days prior and 1 day after an election. SDC's are collected at the time building permits are issued, which is why this is important. Sometimes it takes a while to get documents recorded, where the City would lose some building permits, but hopefully not all of them. The School District will pay system development charges for Alberta Rider School are based on the number of employees.

Mr. Monahan asked Mr. Hendryx to talk about the double majority process. Mr. Hendryx explained under State law, under double majority, cities can require additional property be annexed if there is a majority of the voters and the majority of the property consenting to the annexation. As an example, if two properties request to be annexed, an additional property could be brought in regardless of whether they consent or not. It gets even more complicated and confusing when there are electors living on the property.

Mr. Monahan explained there are more options outlined in Mr. Hendryx's memo that is part of next week's agenda packet.

Mr. Hendryx explained that with 240 lots being proposed in various subdivisions, the park SDC's range between \$1,500 to \$1,700 a house, which adds up to a lot of SDC fees that could be lost.

Councilor Wilson asked what is intent of the discussion next week. Mr. Hendryx responded that the intent is to remind Council of its policy and asking whether Council wants to proceed with annexation regardless of the vote at the November election, or did Council want staff to be more aggressive and use the double majority to bring in more properties. That has been the policy, with the exception of the Bonneville Power Lines and Pacific Crest area annexation.

Mr. Monahan noted this really needs to be clarified, particularly when annexation will create an island. Mr. Hendryx explained that with the various developments surrounding the properties where an island or islands will be created as a result of the annexation, staff sends out letters to surrounding property owners explaining that an annexation petition has been received and asking if they want to be included in the annexation.

Study session recessed at 7:23 p.m.

## 1. BUSINESS MEETING

- 1.1 Mayor Dirksen called the Council and Local Contract Review Board Meeting to order at 7:32 p.m.
- 1.2 Roll Call: Mayor Dirksen, Councilors Moore, Sherwood, Wilson and Woodruff were present
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports

Mayor Dirksen noted on Agenda Item No. 9, the appellant has withdrawn their appeal, therefore, no hearing will be held.

City Manager Monahan noted it is the Planning's Staff's understanding is that the School District will request a Minor Modification to their approved Conditional Use (CUP 2003-00012) for the school. If a Minor Modification is requested, a hearing will not be required as they are approvable as a staff decision. Anyone interested in this matter should contact Morgan Tracy, the staff liaison, on this application.

Councilor Wilson noted he has a report about Goal 5 meetings.

- 1.5 Call to Council and Staff for Non-Agenda Items

## 2. PROCLAMATIONS

- 2.1 Proclaim Constitution Week
- 2.2 Proclaim October as Disability Employment Awareness Month
- 2.3 Proclaim September as National Alcohol and Drug Addiction Recovery Month

Mayor Dirksen asked if there was any objection to his signing the Proclamations. Hearing none, he indicated he would sign and issue the three proclamations.

## 3. VISITOR'S AGENDA

- Nikki Pham, Tigard High School Student Envoy, told the Council about various activities and information related to the high school. Ms. Pham distributed a handout (Agenda Item No. 2, Exhibit 1), which is on file in the City Recorder's office.
- Chamber President Dan Murphy updated the Council on Tigard Area Chamber of Commerce activities.
- Sue Beilke, 11755 SW 114<sup>th</sup>, Tigard, discussed the outcome of the Parks Survey and urged the Council to use funds from the Parks SDC's to acquire open space along Ask Creek.

Mr. Monahan noted the Parks Survey will be an item for discussion at next week's Council Workshop meeting.

## 4. CONSENT AGENDA: Motion by Councilor Sherwood, seconded by Councilor Wilson, to adopt the Consent Agenda as follows:

- 4.1 Approve Council Minutes for April 5, 2004 (Tualatin City Council and Tigard/Tualatin School District #23] Joint Meeting) and August 10, 2004 as corrected
- 4.2 Receive and File:
  - a. Council Calendar
  - b. Tentative Agenda
- 4.3 Local Contract Review Board:
  - a. Award Contract for Storm Drainage and Sanitary Sewer Rehabilitation Program
  - b. Award Contract for Citywide Janitorial Services to Tualatin Valley Workshop

- 4.4 Resolution 04-65, A RESOLUTION OF THE TIGARD CITY COUNCIL APPOINTING SUSAN YSILADA TO THE BUDGET COMMITTEE
- 4.5 Resolution 04-66, A RESOLUTION OF THE TIGARD CITY COUNCIL APPROVING A PERSONAL SERVICE AGREEMENT WITH BRUCE A. LIEBOWITZ, PRO TEM MUNICIPAL COURT JUDGE

The motion was approved by a unanimous vote:

Mayor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Sherwood	-	Yes
Councilor Wilson	-	Yes

4.1b Approve Council Minutes for July 27, 2004 as corrected

Deputy City Recorder Jane McGarvin noted Sally Harding has indicated her statement on page 20 of July 27 minutes was incorrect. Beginning on line 6 of her statement, it should be changed as follows:

"Ms. Harding noted her taxes have gone up substantially since annexation occurred. The tax assessed value is way out of line with the appraised value by \$20,000 plus, both in 2000 and 2002."

Upon motion of Councilor Wilson, seconded by Councilor Sherwood, to approve the Minutes of July 27, 2004 as corrected.

The motion was approved by a unanimous vote:

Mayor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Sherwood	-	Yes
Councilor Wilson	-	Yes

5. INVITATION TO TIGARD BLAST/CITIZEN FAIR

Mayor Dirksen invited the citizens of Tigard and surrounding areas to attend the Tigard Blast and Citizen Fair on Saturday, September 18.

6. INFORMATION AND PRESENTATION – BUSINESS ENERGY TAX CREDIT

Library Director Margaret Barnes explained this program is operated by the Oregon Department of Energy, primarily for commercial buildings as a tax credit. As a public entity, the City of Tigard can identify a business partner who would act as the City's pass-through partner. From the very beginning, the City wanted to find ways for the

building to be energy efficient, to conserve energy, and to be responsible in terms of energy consumption. By working with Engineering and Finance staff, Hoffman Construction and the project manager, the project was certified by the State that the building qualified for this tax credit. She then introduced Eric Hoffman, Operations Manager of Hoffman Construction, to explain various components accomplished during the construction phase.

Mr. Hoffman explained this is an investment by the community and a decision by the team to make an investment in energy saving opportunities. With the efforts of the entire design team, this project contained additional cost measures that were part of the construction costs, totaling about \$230,000 of additional investment, all with an eye on energy savings. These included using more efficient heating systems, special lighting systems that take advantage of daylight, and special services for reflective lighting. The energy savings for this project will actually be 28% higher than what would have been achieved other. This figure translates to approximately \$16,000 a year in savings. The payback time, while a little long, is 14.2 years. Part of the incentive program from the State of Oregon is that Hoffman Construction agreed to be Tigard's business partner. He presented a check to Mayor Dirksen in the amount of \$59,022 which represents their share of the savings. Mr. Hoffman noted this money will save four years of the payback program.

Ms. Barnes commended Mr. Hoffman, Dan and Dirk from Hoffman Construction, and all the men and women who worked on the project. Hoffman's safety record was phenomenal and they were a great team to work with.

## **7. ACKNOWLEDGE ACHIEVEMENTS AND DISBAND THE NEW LIBRARY RESOURCE TEAM**

Ms. Barnes indicated when this project began four years ago, the New Library Construction Team was formed and worked to get the bond measure approved. After the bond measure passed in 2002, the team was recreated as the New Library Resource Team. The group of ten citizens worked diligently with the designers to come up with the building designs, placement on the property, and was quite concerned about being environmentally responsive and fiscally prudent. She noted that of the 10 members, Brian Douglas, Curtis Tigard, George Burgess and Kathy Sleeper were present tonight.

Mayor Dirksen noted his and the Council's appreciation for the teams work, and recognized this was a wonderful, broad based project.

Mr. Monahan noted the other members of the team who were not present were Sue Carver, David Chapman, Elaine Heras, Lonn Hoklin, Sharon Maroney and Joyce Patton.

A motion was made by Councilor Sherwood, seconded by Councilor Moore, TO APPROVE RESOLUTION 04-67, A RESOLUTION TO ACKNOWLEDGE COMPLETION OF THE NEW LIBRARY RESOURCE TEAM, TO THANK MEMBERS FOR THEIR PARTICIPATION AND TO TERMINATE THE RESOURCE TEAM.

The motion was approved by a unanimous vote:

Mayor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Sherwood	-	Yes
Councilor Wilson	-	Yes

8. CONSIDER AN ORDINANCE AMENDMENT THE TIGARD MUNICIPAL CODE, TITLE 14 – BUILDINGS AND CONSTRUCTION

Gary Lampella, Building Official, presented the staff report. He explained the proposal ordinance changes Tigard Municipal Code 14.04 and 14.06. The State of Oregon is replacing the present Uniform Building Code with the International Building Code effective October 1, 2004. There has been a concerted effort to standardize and coordinate codes through the United States and there are only two states yet to adopt some form of the International Codes.

Mayor Dirksen noted Council recently held a workshop meeting concerning this. He asked Mr. Lampella to explain what the changes are.

Mr. Lampella explained the first change is that Tigard had adopted Chapter 33, which covers excavation, grading, and fill. The State of Oregon did not adopt that but gave authority to local governments to adopt that chapter by ordinance. The new International Building Code has renumbered the authority section, so this will be Appendix J as opposed to Appendix Chapter 33. Another change is the liability clause which has been renumbered. On page 2 of Exhibit A, Chapter 14.04 Building Code, includes a reference to the Oregon Administrative Rules (OAR). The OAR's had been amended but the State's website where the OAR's are available had not been updated until recently. Therefore, paragraph (1) which states, "Permit Required – Except as permitted by OAR 918-261.0000 through .0036" should now be .0039. The additional OAR's deal with electrical appliances, such as X-rays and MRI equipment. The intent is to adopt the latest version of the code the State of Oregon has adopted by Statute.

City Attorney Tim Ramis asked if the staff's intent is to have this be effective on October 1, the same day the State Code goes into effect, or is it alright if the ordinance does not go into effect until 30 days from now.



Mr. Lampella stated he has talked with State of Oregon and other municipality representatives and it is okay for this ordinance not to be effective for 30 days. There is a lag time for some projects that are currently in the design phases for the past year to be able to use the current code, with a 90-day extension.

Mr. Ramis stated he just wanted the record to be clear that the intention of staff that the ordinance will not be effective on October 1. The ordinance did not include an emergency clause and the ordinance indicated that the State of Oregon would be adopting the International Building Code effective October 1.

Mr. Lampella indicated there would be a transition period after this takes effect as there is a lag time between the time plans are submitted and before permits are issued. There will be a period of time between adoption and when this new code will be enforceable. He noted Section 14.06 dealing with special inspections is being deleted in its entirety. The Oregon Building Officials Association has written a very comprehensive Special Inspection program that will be used throughout the state, including reciprocity agreements entered into with the State of Washington to approve some of their special inspection companies to work in Oregon. He explained a local company, Carlson Testing, conducts sounder tests, slump test, and really technical welding test. By incorporating the special inspection section in the Tigard Municipal Code, it actually restricts builder's ability to use anyone else. This should be a policy rather than an ordinance.

A motion was made by Councilor Sherwood, seconded by Councilor Wilson, TO APPROVE ORDINANCE NO. 04-10, AN ORDINANCE AMENDING CHAPTERS 14.04 AND 14.06 OF THE TIGARD MUNICIPAL CODE, as revised.

The motion was approved by a unanimous vote:

Mayor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Sherwood	-	Yes
Councilor Wilson	-	Yes

9. PUBLIC HEARING (QUASI-JUDICIAL) – APPEAL OF CONDITIONAL USE PERMIT FOR ALBERTA RIDER SCHOOL AND CITY OF TIGARD WATER RESERVOIR (CUP 2003-00012/VAR 2004-00037/VAR 2004-0004/VAR 2004-0043/VAR 2003-00053)

NOTE: This item had been withdrawn by the applicant. No hearing was held at this time.

10. COUNCIL LIAISON REPORTS:

> UPDATE REGARDING GOAL 5

Councilor Wilson noted the process is moving along. At Council's last meeting, a number of issues were raised. County staff has been working very hard to write a series of white papers addressing each issue separately. Some of them are recommending slight program changes and some will be merely informational. The Committee members received a number of white papers yesterday, even though some are still in draft form. The Committee is scheduled to make some decision two weeks from yesterday, September 27. He is not sure what will be decided at that time.

Councilor Wilson noted the Council still had a number of concerns and he probably would be leaning toward a no vote unless there were substantial changes. What he was hoping that instead of just voting "no," he would try to come up with an idea to address all the Council's concerns. He has been thinking about this issue for some time. One comment he had made at one of the meetings when Council discussed this issue alluded to the possibility that with a stroke of a pen, enormous value could be wiped out or enormous wealth created just by moving a political boundary. He had questioned whether there was a way to neutralize that effect through some sort of transfer of development price.

Councilor Wilson submitted copies of his proposal (Agenda Item #10, Exhibit 1), copy on file with the City Recorder. He stated he asked Tigard's legal counsel to review the proposed statement with the request to determine if there is anything wrong with the proposal; they did not see any problem. He then met with the Kelly Ross of the Metropolitan Home Builders to see if they liked the idea. Mr. Ross was very supportive and even stated he would promote the idea. He then met with Jim Labbe of the Audubon Society; he was a bit skeptical, but was willing to look at it. He talked with Brian Wegener of the Tualatin Riverkeepers who really liked the idea. He has discussed this with Julia Hajduk, Tigard's staff representative on the Coordinating Council, to find out what her response was.

Council Wilson then reviewed each of the proposed statements.

- 1) Metro designates Urban Reserves. Metro would designate urban reserves outside the urban growth boundary that meet the criteria to be brought in and they would designate enough urban reserve to compensate for at least all of the land you are trying to protect.
- 2) Resource Land Traded for UGB Expansion Rights from Willing Participants. In other words, if someone is the owner of resource land that is otherwise developable, you could voluntarily opt to dedicate your land to a public park agency, with a local park provider, in exchange for a certificate that

would entitle you to expand the urban growth boundary into the designated urban reserve area.

If a person had some really high value resource land, they might get 1.5 acres per acre that is designated. An owner could take those certificates and sell them to a developer, and the developer could then negotiate with property owners within the urban reserve area to either purchase them outright or some sort of joint venture, to bring the area into the urban growth boundary and develop it.

- 3) Land Purchased to Prevent Development from Unwilling Participants. Some property owners would not willingly participate in the program and if there is a fund set aside, perhaps through an increase in the surface water management (SWM) fees to raise funds for Goal 5 protection, there could be some sort of program to set aside reserves to purchase property from those owners who choose not to participate at the time development proposal came forward, and it might be the property could be acquired through eminent domain. If the property would serve the public interest, we are going to go ahead and take it and purchase it. That would be like having gold to back up the dollar bill. It is hoped you actually would not have to use it, but there might be some instances where this would be needed.
- 4) Owners May Request Map Corrections to Remove the Resource Designation from Their Property. This addresses map corrections, which could be either remove the designation or perhaps to add the designation, since there is an incentive program, there may be areas that Metro has missed that should actually be designated.
- 5) Owners may Create Resource Land and Become Eligible for the Program. There may be areas that are not yet resource land and owners could actually come up with a mitigation plan and create resource land. There may be places where there is a stream in a culvert, that could be day lighted, planted and turned into resource land and actually create some connectivity that is apparently lacking. Brian Wegener especially liked that idea.

Councilor Wilson indicated that is his idea. Metro decides the development interest and environmental issue and Metro has to be convinced. There may still be significant issues. He stated he has been mulling this through his mind for some time.

Mayor Dirksen stated he was very impressed with Councilor Wilson's proposal. His first impression was to react against it because in general, he is opposed to expanding the urban growth boundary. His concern with Goal 5 was that it was likely that pristine wildlife habitat outside the urban growth boundary would be sacrificed in an effort to save degraded wildlife habitat inside the

urban growth boundary. He recognizes that one has to be willing to compromise in order to come up with a workable solution. What happens if you dig your heels in and demand everyone come around to your point of view. At first glance, this statement includes some really terrific ideas that need to be explored. He asked if this proposal has been shared with the rest of the Natural Resources Steering Committee.

Councilor Wilson replied he felt the order he should follow was, first check to see if there were any legal issues to prohibit this from being done; second was to check with the two extreme opposing sides to determine if both had any interest in the statement; and third, review the proposed statement with City staff and Council for support. This was the process he has followed. If Council supported his proposal, he would pursue it further. The response from everyone so far has been very positive.

Councilor Moore said the proposed statement shows Councilor Wilson has spent a great deal of time in writing this proposal, which he appreciates.

Councilor Wilson stated the two opposing sides are not even talking to each other at the meetings. It occurred to him that nobody really opposes the goal but is concerned about how we get there.

Councilor Moore indicated the thought process demonstrates a way to achieve a balance, which includes how to compensate affected property owners. Reading through the proposal offers a real compromise to everyone. That is obvious from the fact Kelly Ross, Jim Labbe and Brian Wegener indicated they support the statement which says a lot about the proposal. This is very impressive. This talks about balance and solves some major problems. This is a very good compromise, even though he does not like to use that word. When the word 'compromise' is used, it generally means someone loses something and someone else wins something. He thinks everyone wins if this statement is approved and implemented.

Councilor Sherwood concurred this was a very good proposal and asked what the next step would be.

Councilor Wilson asked if he could put this on city letterhead. He has already talked with Community Development Director Jim Hendryx about some tweaking of the proposal before submitting the document to other players. He would also meet individually with some of the committee members to get their support.

Councilor Moore stated Councilor Wilson had his support. He did not see any fatal flaws in it. Someone will always come up with something, but this is a great document, well thought out and planned.

Councilor Sherwood stated all the Councilors support Goal 5, but never had full support of all the proposed solutions. This document seems to address those concerns.

Mr. Monahan stated the Council consensus appears to say to Councilor Wilson that it is okay to place this proposal on City stationery, to indicate that the Tigard City Council has reviewed and supports the concept, and to allow Councilor Wilson to go forward.

Councilor Moore stated he would add that the final document was suggested by Councilor Wilson.

Mayor Dirksen noted Council will endorse this. Generally if something like this is presented to a group, it would normally be picked apart. He supports the concepts stated in Council Wilson's document.

11. NON AGENDA ITEMS: None

The meeting adjourned at 8:36 p.m.

Attest:

  
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Mayor, City of Tigard

Date: October 12, 2004

  
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Jane McGarvin, Deputy City Recorder